

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VISA U.S.A. INC.,

Plaintiff,

vs.

MARITZ INC., d/b/a MARITZ
LOYALTY MARKETING,

Defendant.

Case No. CV-07-5585 JSW

**[PROPOSED] ORDER DENYING MARITZ
INC.'S ADMINISTRATIVE REQUEST TO
CONTINUE THE HEARING DATE ON
VISA U.S.A. INC.'S MOTION TO
COMPEL ARBITRATION; AND EX
PARTE APPLICATION FOR DISCOVERY**

Now before the Court is Defendant Maritz Inc.'s ("Maritz's") *ex parte* application seeking expedited discovery regarding its fraudulent inducement claim and administrative request to continue Visa U.S.A. Inc.'s ("Visa's") February 8, 2008 hearing date by 60 days. Having carefully reviewed the submissions of the Parties, and the relevant legal authority, and good cause appearing, Defendant's *ex parte* application and administrative request are hereby DENIED.

Maritz has failed to establish grounds justifying *ex parte* relief, in that it has not demonstrated that its own delay did not create the "crisis" purportedly requiring *ex parte* relief. *See Mission Power Eng'g Co. v. Continental Cas. Co.*, 883 F. Supp. 488, 492 (C.D. Cal. 1995). Maritz has further failed to carry its burden to show any genuine issue of material fact to warrant expedited discovery relating to its fraudulent inducement issue or to demonstrate that Visa had any duty to disclose the amount of its claimed damages prior to execution of the Letter

1 Agreement. *See People v. Highland Fed. Sav. & Loan*, 14 Cal. App. 1692, 1718-19 (1993).

2 Accordingly, the Court Orders as follows:

3 1. Maritz's *ex parte* application for expedited discovery is DENIED.

4 2. Maritz's administrative request to continue the February 8, 2008 hearing date for
5 Visa's Motion To Stay Action and To Compel Arbitration for 60 days is DENIED.

6
7 IT IS SO ORDERED.

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9 DATED: _____

Honorable Jeffrey S. White
UNITED STATES JUDGE FOR THE NORTHERN
DISTRICT OF CALIFORNIA